

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

LINDA MULLINS, :  
Plaintiff, :  
v. : Civil Action  
EQUIFAX INFORMATION SERVICES, : No. 3:05CV888  
LLC, et al. : January 18, 2006  
Defendants. :

COMPLETE TRANSCRIPT OF FINAL PRETRIAL HEARING  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES :

CONSUMER LITIGATION ASSOCIATES  
Newport News, Virginia  
BY: LEONARD A. BENNETT, ESQ.  
MATTHEW ERAUSQUIN, ESQ.

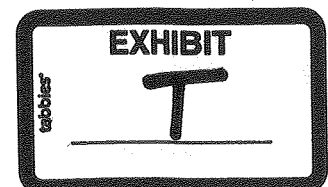
and  
KRUMBEIN & ASSOCIATES  
Richmond, Virginia  
BY: JASON KRUMBEIN, ESQ.

Counsel on behalf of the Plaintiff

KOGAN, TRICHON & WERTHEIMER  
Philadelphia, Pennsylvania  
BY: BRUCE S. LUCKMAN, ESQ.  
and  
HARMAN, CLAYTOR, CORRIGAN & WELLMAN  
Richmond, Virginia  
BY: MARK G. CARLTON, ESQ.

Counsel on behalf of the Defendants

DIANE J. DAFFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT



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1 about.

2 It's the same objection that they are not notice,  
3 that they are different, that they might be appropriate  
4 for forming jury instructions, but not to have the  
5 panel read them and try to figure out the nuances and  
6 whether they are similar.

7 THE COURT: First, I'm not going to let the jury  
8 read the decisions. I don't think that makes any  
9 sense. It's not what juries do.

10 Was Trans Union a party in those cases?

11 MR. BENNETT: Every one. In fact, counsel was  
12 defending most of them.

13 THE COURT: All right. I think the information  
14 that Trans Union got a message from a court that told  
15 it its investigative procedures were inadequate is  
16 relevant. I don't think it's prejudicial because it is  
17 notice that the investigative procedures were relevant.  
18 The question is: How does it come in?

19 MR. LUCKMAN: Your Honor, if I may, we believe  
20 it's not relevant because the cases, many of them, have  
21 to do with, for example, Soghomonian and Lawrence in  
22 particular, they have to do with Trans Union failed to  
23 forward documentation that conclusively established an  
24 inaccuracy, which was the certification of no  
25 attachment from Soghomonian or a docket.

1           In Lawrence, the woman sent a docket to Trans           85  
2   Union. Trans Union didn't forward it to the vender.

3   So the Court said the failure to use it or forward it.  
4   So that's a different -- it's irrelevant here because  
5   she didn't forward anything that Trans Union could have  
6   forwarded back to MBNA.

7           THE COURT: Well, what's your objection? It's 403  
8   evidence.

9           MR. LUCKMAN: It's confusing.

10          THE COURT: Well, then say that.

11          MR. LUCKMAN: It's confusing and irrelevant, but  
12   it would be very confusing to the jury.

13          THE COURT: Cushman says you can't parrot  
14   information given you by the bank.

15          MR. LUCKMAN: Under some circumstances.

16          THE COURT: Period. That's it.

17          MR. LUCKMAN: It says "under some circumstances."

18          THE COURT: Look, it's time that you-all came to  
19   realize that when a Court tells you something, you have  
20   got to realize it, accept it, and do something about  
21   it. If you don't, you're in trouble.

22          It's time that your client understood that, and  
23   that's what he's trying to prove. And if you don't do  
24   it, you get punished for doing it. That's just the way  
25   life is.

1           The question is: Did the particular Court tell <sup>86</sup>  
2   them to do it?

3           MR. BENNETT: They did.

4           THE COURT: Tell them that the procedure that is  
5   at issue here was inadequate?

6           MR. BENNETT: Yes, sir.

7           THE COURT: In which cases?

8           MR. BENNETT: The six that we cited starting with  
9   Cushman, but the best on this -- the phrasing I like is  
10   from Soghomonian where it says -- it refers to Trans  
11   Union's argument as this argument is contrary to  
12   clearly established law.

13          And in each of these cases, in fact in the last  
14   one, in Lawrence, the Judge chastised Trans Union for  
15   ignoring the decisions in the same court in Crane, and  
16   referenced that case and said, "This is exactly the  
17   same conduct that was considered in Crane."

18          I've cited each of the paragraphs. In fact, in  
19   Crane, Eileen Little's testimony is described with the  
20   Judge saying --

21          THE COURT: What page are you talking about? You  
22   don't have pages.

23          MR. BENNETT: I don't. Starting, Judge, after  
24   footnote 13 at the bottom is the Cushman citations, and  
25   the most cited paragraph in any case -- if do you a

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1 Westlaw search on 1681i, and you'll see repeated in all  
2 these cases is that middle paragraph with footnote 13  
3 at the bottom of the page. And that middle paragraph  
4 is not a condition statement. It says, "You cannot  
5 parrot." It's 1997. Same defendant. Same defense  
6 counsel. And that paragraph --

7 THE COURT: How many of the cases actually hold  
8 that?

9 MR. BENNETT: All of the cases I've cited. In  
10 fact, every one I've cited even uses that citation.

11 THE COURT: Do they say it?

12 MR. BENNETT: Yes, sir.

13 THE COURT: All right. And that's what happened  
14 in this case?

15 MR. BENNETT: That's exactly what happened in this  
16 case.

17 THE COURT: All right.

18 MR. LUCKMAN: Your Honor --

19 THE COURT: So I think they can be told that on at  
20 least these occasions courts of the United States have  
21 told First Union the following: Boom.

22 MR. LUCKMAN: Is that a jury instruction?

23 THE COURT: Yes. They get told that by the Court.

24 I've read the four Illinois cases that you have  
25 and I don't think they apply.

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1 MR. LUCKMAN: Our objection, just for the record,  
2 is --

3 THE COURT: Because the cases you cite are  
4 basically cases where accuracy was the issue and here  
5 that isn't the issue. It's already been determined  
6 that it's inaccurate.

7 MR. LUCKMAN: Our objection, sir, is that the  
8 circumstances of each of those cases are very different  
9 than this case because in each of those, except for  
10 Cushman, there was a document which was not forwarded,  
11 and that drove the Court's decision to be so harsh with  
12 Trans Union about its procedures.

13 So although they may have used the term  
14 "parroting," it was in connection with the failure in  
15 Soghomonian, and Lawrence, and Crane, in not sending  
16 supporting or conclusive documents.

17 THE COURT: That's sort of an argument about how  
18 many angels can stand on the head of a pin because you  
19 have been told in each one of these that you can't just  
20 parrot information, and that's what you did here. And  
21 it seems to me to be what we can do.

22 So you prepare a proper instruction that actually  
23 contains that citation and the number of courts of  
24 appeals, and I'll consider it, review it, and give that  
25 instruction.

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1 It seems to me it's an appropriate thing to do,  
2 but the actual cases can't go to the jury. You can't  
3 ask a jury to do that.

4 MR. BENNETT: Judge, but our --

5 THE COURT: I'll do it in connection with the  
6 notice issue.

7 MR. BENNETT: Yes, sir. We'll try to get that to  
8 counsel and to the Court by tomorrow morning.

9 MR. LUCKMAN: Your Honor, if we could, and I  
10 briefly discussed this with Mr. Bennett earlier,  
11 because of your rulings, I think we need to doctor up  
12 our agreed jury instruction and jury instructions, and  
13 I think, unfortunately, I'm not going to be able to get  
14 back to my office until sometime tomorrow.

15 So if we could maybe have a little later than  
16 tomorrow morning to put this stuff together and get it  
17 back in your hands and make some sense out of it.

18 THE COURT: Let's finish what we've got here.

19 MR. LUCKMAN: The only reason I said that is that  
20 we're pretty close to being finished.

21 THE COURT: Let me see. Page what was it, 9 or  
22 11?

23 MR. LUCKMAN: You were just on page 10.

24 THE COURT: Ten. Okay. That is 33 through 40 is  
25 the objection is overruled. Issue will be subject of.

1 an instruction. 90

2 Are you having an executive of your company come  
3 here to the trial?

4 MR. LUCKMAN: Well, for purposes of testimony  
5 there will be a senior vice president, Bill Stockdale,  
6 but not an executive decision-maker in terms of either  
7 reinvestigation issues or policy decisions. He's  
8 fairly senior. His area is the information services  
9 area.

10 THE COURT: All right. 33 through 40 is taken  
11 care of then.

12 MR. BENNETT: Judge, 40 is a little different.

13 THE COURT: Excuse me. Through 38.

14 MR. BENNETT: Yes, sir.

15 THE COURT: That's what that meant. Why are we  
16 putting the Johnson decision in? Just to show there  
17 have been punitive damages?

18 MR. BENNETT: There wasn't punitives. But the  
19 Johnson decision --

20 THE COURT: Johnson involves MBNA.

21 MR. BENNETT: That's right, and it's a public  
22 statement in a case in which Trans Union was a party  
23 and in which this public document, that's not been  
24 objected to for hearsay, describes in detail what MBNA  
25 procedures to do an investigation are.